

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, June 26, 1996

ASBESTOS ABATEMENT

PURPOSE OF REPORT

To provide an asbestos allowance for certain modernization projects.

DESCRIPTION

In accordance with the provisions of Proposition 203, the State Allocation Board (SAB) may allocate funds for the purpose of abatement of friable asbestos. The SAB has an established Lease-Purchase Asbestos Abatement Program (LPAAP) for this purpose, but has not allocated funds to this program in the past several years. As a result, the SAB elected not to accept applications for this program and advised districts to fund its necessary asbestos abatement work as deferred maintenance. Should asbestos abatement be necessary as a result of a modernization project, SAB policy provides that up to ten percent of the modernization allowance may be used for this purpose.

Since many districts have been required to abate asbestos as a result of work performed during the modernization project, a portion of the modernization allowance is used for asbestos abatement and not to enhance the facility for current educational requirements. An additional allowance for the necessary asbestos work could be made to ensure that districts are given the full benefit of the modernization allowance for the purpose intended. Additionally, providing added funding in the modernization project for this asbestos work will reduce the paperwork and processing by both the school districts and the Office of Public School Construction (OPSC) in lieu of funding the LPAAP. If the LPAAP were funded, districts would be required to file a separate application for the asbestos work encountered.

Additional cost to the modernization program to fund the necessary asbestos work for those projects that received a Phase C apportionment on May 29, 1996 is approximately \$20 million.

There was some concern that augmentation of the allowance for asbestos removal in a modernization project may not be possible since the increase would violate provisions of Education Code Section 17721.4. That law sets a limit on modernization costs funded by the State to 25% of the current replacement value of the facility. Since the proposed increase to the allowance is deemed to be asbestos abatement (not modernization), it could be considered a separate allowance provided in conjunction with the modernization allowance, therefore, outside the 25% limitation.

LEGAL ANALYSIS

Education Code Sections 17721.3 and 17721.4 limit the approval of modernization projects for facilities that are less than 30 years old or exceed 25% of the replacement cost of the project, unless the excess is locally funded. The Public School Facilities Bond Act of 1996 (Proposition 203) did not eliminate these

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limitations for modernization projects that require assessment or abatement of asbestos containing building material. Proposition 203 funds can, however, be used to fund asbestos assessment or abatement projects through Education Code 39619.6 which offers a mechanism distinct from the modernization program. Therefore, the SAB is not authorized to provide modernization funding beyond the maximum 25% modernization allowance to fund asbestos assessment or abatement costs, however, the SAB can provide a separate asbestos abatement allowance in conjunction with the modernization allowance.

ALTERNATIVE #1

Since current SAB policy provides that asbestos work may be funded by the Deferred Maintenance Program or as part of the modernization project (limited to 10% of the allowance), do not provide additional funding for asbestos abatement at this time.

ALTERNATIVE #2

Provide an additional allowance for asbestos abatement work necessary as a result of the modernization project, subject to the following:

1. The asbestos work is necessary as a result of the modernization project.
2. The necessary asbestos work cannot exceed ten percent of the modernization allowance.
3. The district must fund at least 50% of the necessary asbestos abatement work with separate funds not committed to the project.
4. The asbestos work is accomplished in accordance with criteria developed for the Lease-Purchase Asbestos Abatement Program.
5. Any request for additional funding for the asbestos work included in the Division of State Architect approved plans must be received by the OPSC prior to bid approval.
6. The modernization project was funded for Phase C with bond funds approved after November, 1992.

The State Allocation Board's Implementation Committee supports this proposal provided the funding is not considered for this program until a comprehensive plan for all programs is discussed.

RECOMMENDATION

Adopt Alternative #1.